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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,692	05/15/2007	Hye Won Lee	Q96956	9037

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EXAMINER	
CHEN, CATHERYNE	

ART UNIT	PAPER NUMBER
1655	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,692	LEE ET AL.	
	Examiner	Art Unit	
	CATHERYNE CHEN	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 August 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 4-9* is/are pending in the application.

4a) Of the above claim(s) *9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 4-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/29/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Currently, Claims 1, 4-9 are pending. Claims 1, 4-8 are examined on the merits.

Claims 2-3 are canceled.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Aug. 12, 2009 has been entered.

Election/Restrictions

Applicant's election without traverse of Group I (Claims 1, 4-8), the species fruit and yoghurt and strawberry, in the reply filed on April 25, 2008 is acknowledged.

Claim 9 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 25, 2008.

Response to Arguments

Applicant's arguments with respect to claims 1, 4-8 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sakai (JP 2002326920 A).

Sakai teaches emulsion composition for cosmetics containing 0.5 weight parts mannan and 0.5 weight parts xanthan gum to obtain an oil-in-water emulsion with weight parts of 202, which is total of all the compositions (Abstract). Weight parts can be converted to ratios, which give ratio of 1:1 for xanthan gum to mannan. 0.5 weight part out of 202 is about 0.4%. Because the composition and amounts are taught, the composition will inherently have a lumpy texture and viscosity of a curd yoghurt formulation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai (JP 2002326920 A) in view of Bourriot et al. (FR 2811997 A1).

Sakai teaches emulsion composition for cosmetics containing 0.5 weight parts mannan and 0.5 weight parts xanthan gum to obtain an oil-in-water emulsion with weight parts of 202, which is total of all the compositions (Abstract). Weight parts can be converted to ratios, which give ratio of 1:1 for xanthan gum to mannan. 0.5 weight part out of 202 is about 0.4%. Because the composition and amounts are taught, the composition will have a lumpy texture and viscosity of a curd yoghurt formulation.

However, Sakai does not teach starch in a ratio of up to 10 times to 1 weight of combined xanthan gum and mannan.

Bourriot et al. teaches composition for cosmetic formulation with starch at 10-50 wt% (Abstract). 10 parts of starch to 1 part of xanthan gum and mannan will be 10 times to 1 weight of combined xanthan gum and mannan.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan with starch because starch is a thickener that can be used to increase the viscosity of the xanthan gum and mannan composition for cosmetic use. One would have been motivated to make starch into xanthan gum and mannan cosmetic composition for the expected benefit of thickening a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

Claims 1, 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai (JP 2002326920 A) and Bourriot et al. (FR 2811997 A1) further in view of Contamin (EP 315541 A) and Kitchencraftsnmore (http://web.archive.org/web/20031208031644/http://kitchencraftsnmore.net/bath3.html).

Sakai teaches emulsion composition for cosmetics containing 0.5 weight parts mannan and 0.5 weight parts xanthan gum to obtain an oil-in-water emulsion with weight parts of 202, which is total of all the compositions (Abstract). Weight parts can be converted to ratios, which give ratio of 1:1 for xanthan gum to mannan. 0.5 weight part out of 202 is about 0.4%. Because the composition and amounts are taught, the composition will have a lumpy texture and viscosity of a curd yoghurt formulation.

However, Sakai does not teach starch in a ratio of up to 10 times to 1 weight of combined xanthan gum and mannan, yoghurt powder and strawberry, pack formulation.

Bourriot et al. teaches composition for cosmetic formulation with starch at 10-50 wt% (Abstract). 10 parts of starch to 1 part of xanthan gum and mannan will be 10 times to 1 weight of combined xanthan gum and mannan.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan with starch because starch is a thickener that can be used to increase the viscosity of the xanthan gum and mannan composition for cosmetic use. One would have been motivated to make starch into xanthan gum and mannan cosmetic composition for the expected benefit of thickening a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

Contamin teaches cosmetic composition with lyophyilized yoghurt or kehir for application to skin to improve smoother and softer skin, while improving firmness and storage for along time (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan with yoghurt powder because yoghurt powder can be used to increase the firmness and improve smoothness and softness for cosmetic use. One would have been motivated to make yoghurt powder into a cosmetic composition with xanthan gum and mannan for the expected benefit of a composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

Kitchencraftsnmore teaches 2 tablespoons of plain yogurt with ½ teaspoon of lemon juice (page 1, Aging Skin Fighter) and 1 tablespoon of yogurt with a few strawberries are blended in a food process or blender and applied to the face (page 2, Almonds and Beeries Facial Mask).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use xanthan gum and mannan with strawberries as a cosmetic composition because strawberries contain fragrance that can be used to add a pleasant smell for cosmetic use. One would have been motivated to put strawberries into xanthan gum and mannan cosmetic composition for the expected benefit of a pleasant smelling composition for application to skin. Absent evidence to the contrary, there would have been a reasonable expectation of success in making the claimed invention from the combined teachings of the cited references.

The references do not specifically teach formulating the composition in the form claimed by applicant. The pack pharmaceutical form is well known in the art to be acceptable means of administering a pharmaceutically active substance. Based on this knowledge, a person of ordinary skill in the art would have had a reasonable expectation that formulating the composition taught by the references in the claimed forms would be successful. Therefore, an artisan of ordinary skill would have been motivated to formulating the composition taught by the reference in the forms claimed by applicant. Such reasonable expectation would provide motivation to use a pack formulation for cosmetics.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Examiner Art Unit 1655

/Michael V. Meller/

Primary Examiner, Art Unit 1655